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**SANTA CLARA COUNTY CLERK-RECORDER**

**Recording Requested By:**

Cupertino Electric Inc.  
1132 North Seventh Street  
San Jose, California 95112

Doc#: 18969260  
6/09/2006 1:34 PM

**When Recorded, Mail To:**

Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

Former BW/IP International Inc. Facility  
1132 North Seventh Street  
Assessor Parcel Numbers 235-13, 235-14, 235-15, 235-16, and 235-17

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 31<sup>st</sup> day of May, 2006, by Cupertino Electric Inc. ("Covenantor") who is the Owner of record of that certain property situated at 1132 North Seventh Street, in the City of San Jose, County of Santa Clara, State of California, which is more particularly described in "**Exhibit A**" attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Water Board"), with reference to the following facts:

A. The groundwater underlying the Burdened Property contains hazardous materials.

B. Contamination of the Burdened Property. Soil and groundwater at the Burdened Property was contaminated by petroleum storage and chemical handling practices conducted by United Centrifugal and BW/IP Industries, Inc. These operations resulted in releases of organic chemicals including total petroleum hydrocarbons (TPH) as gasoline (TPHg) and halogenated volatile organic compounds (HVOCs). Groundwater sampling has indicated that TPHg and volatile organic compounds (VOCs), primarily tetrachloroethene (PCE), trichloroethene (TCE), cis-1,2-Dichloroethylene (cis-1,2-DCE), and vinyl chloride have been detected in the groundwater. These constitute hazardous materials as that term is defined in Health & Safety Code Section 25260.

In 1985, United Centrifugal Pumps abandoned in-place a 1,000 gallon gasoline underground storage tank (UST). The approximate location of this tank is depicted in "**Exhibit B**".

BW/IP removed a 500 gallon kerosene UST in January 1992. In September and October 1994, investigations were conducted at the Burdened Property. Seventeen additional wells were installed in the shallow water bearing unit. Nine of the wells were recovery wells (ITRW-1 through ITRW-9) and the remaining wells were monitoring wells (ITMW-1 through ITMW-8). VOCs, TPHg, and BTEX were detected in soil and groundwater samples collected during drilling and sampling of the majority of these wells.

In May 1995, an interim groundwater recovery and treatment system was installed. The system began treating groundwater from recovery wells ITRW-1 ITRW-2, ITRW-4, and ITRW-5 in June 1995 and from recovery wells ITRW-7, ITRW-8, and ITRW-9 in November 1995.

An Interim Remedial Action Plan (IRAP) dated April 9, 1999 was implemented on the Burdened Property from August 4, 1999 through December 20, 1999. The IRAP used in-situ oxidation technology to reduce HVOCs found within the groundwater at the site; specifically PCE, TCE, cis-1,2-DCE, and vinyl chloride to concentrations within or below their MCLs. Laboratory analytical results of the groundwater samples collected during the interim remedial action activities indicated that the HVOC-affected groundwater had been treated to produce groundwater concentrations that were below their MCL for PCE, TCE, cis-1,2-DCE, and vinyl chloride.

The groundwater samples that were collected in December 2004 indicated that PCE, TCE, cis-1,2-DCE, and vinyl chloride concentrations in the groundwater samples were generally below their respective MCLs with the exception of samples collected from wells ITRW-3, ITRW-4, ITRW-7, and MW-5. Cis-1,2-DCE concentrations contained in wells ITRW-3, ITRW-4 and MW-5 were above the MCL but considerably less than ten times the MCL. Similarly, vinyl chloride concentrations detected in wells ITRW-7 and MW-5 exceeded the MCL and were significantly less than ten times the MCL.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in groundwater on the Burdened Property and are also likely present in the area of the abandoned in-place UST. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via ingestion or direct contact to groundwater and inhalation of vapors from groundwater. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used by Cupertino Electric Inc. and is adjacent to light industrial/commercial land uses.

E. Full and voluntary disclosure to the Water Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner

as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Water Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Water Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 Water Board. "Water Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, re-gradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

### ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Unless the abandoned in-place UST described in this Covenant is removed, along with impacted soil in excess of unrestricted use health-based standards, development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. Development of the Burdened Property shall be conducted in a manner to minimize direct contact to shallow groundwater.
- c. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work sufficiently deep enough (greater than 10 feet below grade) to have direct contact with the shallow groundwater on the Property, unless expressly permitted in writing by the Water Board.
- d. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, irrigation, domestic, potable, or industrial uses, unless expressly permitted in writing by the Water Board.
- e. The Covenantor agrees that the Water Board, and/or any persons acting pursuant to Water Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
- f. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as

set forth in paragraph 3.1, shall be grounds for the Water Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Water Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument that shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in groundwater under the property and in soil within the area around the abandoned in-place underground fuel storage tank (the approximate location of which is depicted in "Exhibit A" of the Deed Restriction), and is subject to a Deed Restriction dated as of MAY 31, 2006, and recorded on JUNE 9, 2006, in the Official Records of Santa Clara County, California, as Document No. 18969260, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication

shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

Cupertino Electric Inc.  
1132 North Seventh Street  
San Jose, California 95112

*If To: "Water Board"*

Regional Water Quality Control Board  
San Francisco Bay Region  
Attention: Executive Officer  
1515 Clay Street, Suite 1400  
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

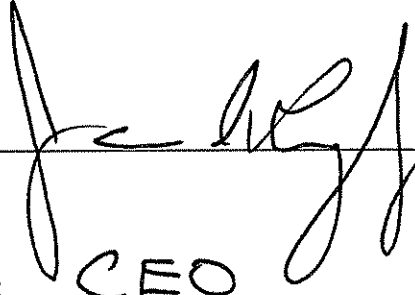
5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Water Board. This instrument shall be recorded by the Covenantor in the County of Santa Clara within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

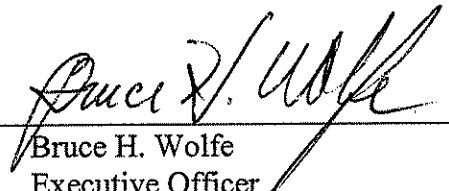
Covenantor:

By:   
Its: CEO

Date: 6/08/06

Agency:

State of California  
Regional Water Quality Control Board,  
San Francisco Bay Region

By:   
Bruce H. Wolfe  
Executive Officer

Date: 5/31/06

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

SS.

On June 8, 2006, before me, Cecilia V. Nocon, Notary Public,  
personally appeared James S. Ryley, CEO

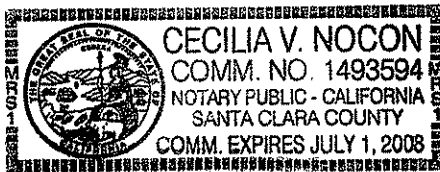
Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Cecilia V. Nocon

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Covenant & Environmental Restriction on Property

Document Date: 6/8/06 Number of Pages: 10

Signer(s) Other Than Named Above: none at time of notary

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

Alameda

} ss.

On May 31, 2006

Date

before me,

Phyllis Quintero, a Notary Public

Name and Title of Officer (e.g., "Jane Doe/Notary Public")

personally appeared

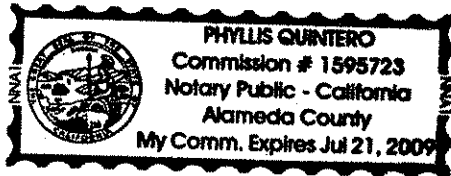
Bruce H. Wolfe

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Phyllis Quintero  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document:

Covenant & Environmental Restriction on

Document Date:

5/31/06

Number of Pages:

Property 10

Signer(s) Other Than Named Above:

none at time of notary

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

☐ Individual

☐ Corporate Officer — Title(s): \_\_\_\_\_

☐ Partner — ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

## **“EXHIBIT A”**

### **LEGAL DESCRIPTION OF PROPERTY**

The Burdened Property is located at 1132 North Seventh Street, on the east side of North Seventh Street, south of Interstate 101 and is within the legal jurisdiction of the City of San Jose, Santa Clara County, California. The Burdened Property consists of five parcels identified in the County of Santa Clara as Assessor Parcel Numbers 235-13, 235-14, 235-15, 235-16, and 235-17.

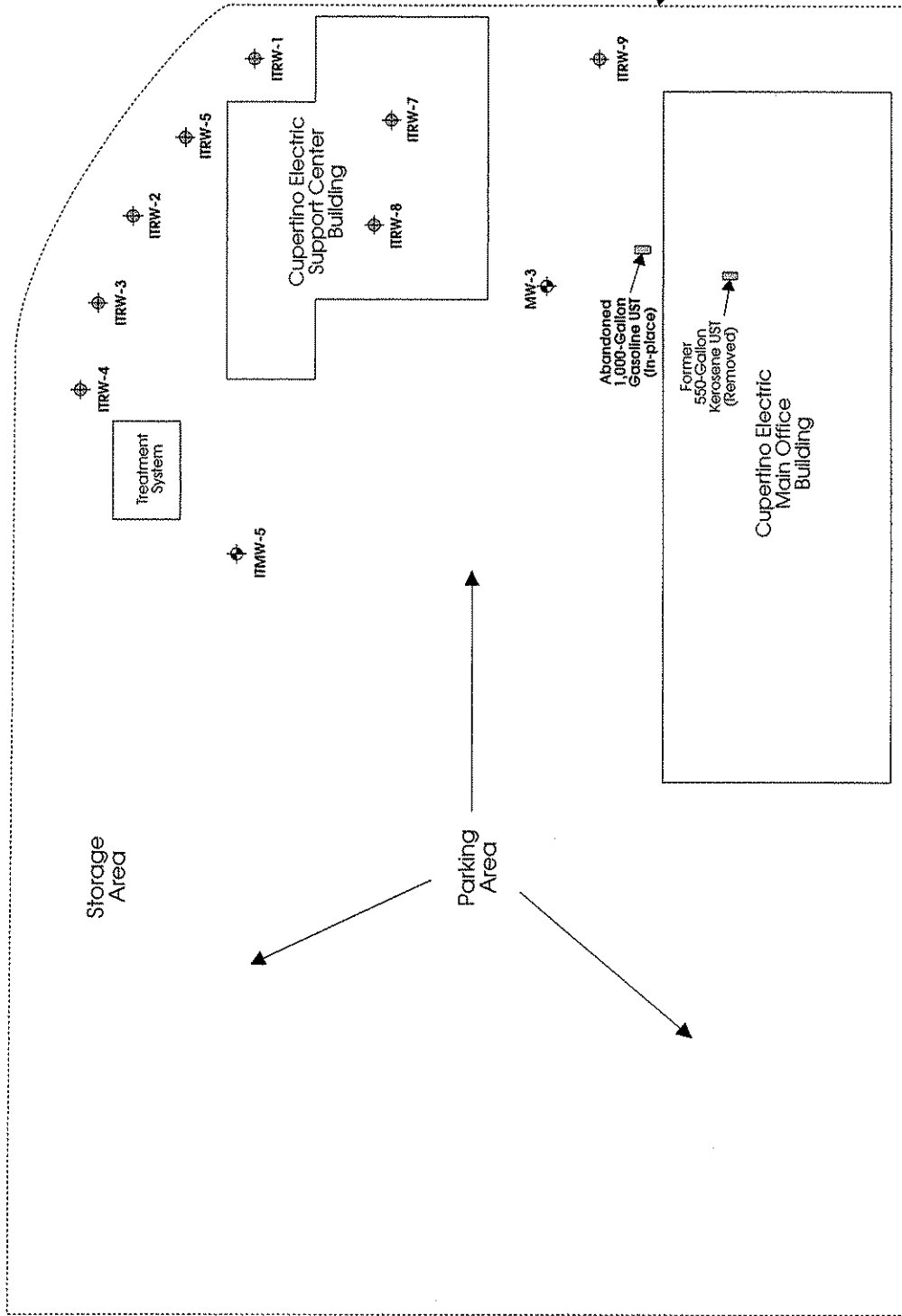


NORTH SEVENTH STREET

HIGHWAY 101

EXPLANATION:

- ⊕ Recovery Well Location  
ITRW-5
- ⊕ Monitoring Well Location  
ITMW-5



"EXHIBIT B"

May 2006

Scale: 1" = 100'



# SCHEMATIC SITE PLAN

1132 North Seventh Street, San Jose, CA

Figure 1

Project 2266